Excerpt from Brief of Defendants-Appellees (at 20-21) in *Pearson* v. *Ecological Science Corp.* United States Court of Appeals, Fifth Circuit, No. 74-2175:

Since so much has been made by appellants and by the Securities and Exchange Commission in its *amicus* brief (see pp. 7-8, 23) of the settlement's provisions for withdrawal of documents and sealing of the court file, a few further remarks are in order. In proposing these provisions, defendants sought no more than "to cement the reconciliation between the parties to the controversy. . . ." *Ex parte Davidge*, 82 S.C. 97, 63 S.E. 449 (1909). The parties saw no reason to preserve a public record of the scars of battle. When the Commission in successfully opposing defendants' motion to seal the record on appeal pointed out that the weight of authority was against such provisions, defendants advised the Commission (see SEC Br. 8 n.13) that they would agree and would represent to this Court—and do hereby represent—that upon conclusion of the appeal, even if the order dismissing the actions is affirmed, a joint application will be made to the District Court to unseal the file and vacate the authorization for document withdrawal.* (The only reason such application has not already been made is that the pendency of this appeal has removed the jurisdiction of the District Court to act upon the application without this Court's approval—see Fed. R.Civ.P. 60(b); *Ferrell* v. *Trailmobile, Inc.*, 223 F.2d 697, 699 (5th Cir. 1955). Should this Court wish the file to be unsealed and the authorization for document withdrawal vacated by the District Court before the appeal is decided, defendants will immediately so apply to the District Court.)

* All withdrawn documents were returned to the District Court and have been lodged with the Clerk of this Court as part of the record on appeal.

Order of United States District Court for the Southern District of Florida, Filed November 26, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

No. 71-1058-CIV-PF

CARL M. PEARSON, *et al.*, *Plaintiffs,*

vs.

ECOLOGICAL SCIENCE CORPORATION, *et al.*, *Defendants.*

Filed Nov. 26, 1975 Joseph I. Bogart Clerk U. S. Dist. Court Southern Dist. of Miami, Fla.

ORDER

THIS CAUSE came before the Court upon the following application of the plaintiffs, CARL M. PEARSON, *et al.*:

APPLICATION OF PLAINTIFFS AND DEFENDANTS: TO UNSEAL THE COURT FILE

The Court having considered the record, it is—

ORDERED AND ADJUDGED that the plaintiffs' application is hereby granted.

DONE AND ORDERED at Miami, Florida this 26th day of November, 1975.

PETER FAY
United States District Judge

cc:
All Counsel